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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,
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11 Plaintiff,
12 v.
13 AUBREY TAYLOR,
14 Defendant.

Case No. 2:16-CR-300-RSL

ORDER DENYING
DEFENDANT'S MOTION
TO DISMISS WITH
PREJUDICE FOR SPEEDY
TRIAL ACT VIOLATIONS

15 This matter comes before the Court on defendant Aubrey Taylor's "Motion to Dismiss
16 with Prejudice for Speedy Trial Act Violations." Dkt. #178.

17 **BACKGROUND**

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19 On May 4, 2016, United States Magistrate Judge Mary Alice Theiler signed a complaint
20 charging defendant with one count of Sex Trafficking of a Juvenile under 18 U.S.C. §
21 1591(a)(1) and (b)(2). Dkt. #1. A federal arrest warrant was issued on the same date. Dkt. #2. At
22 the time, defendant had two additional criminal cases pending against him in the Kent Municipal
23 Court, Case No. K108330FV ("the Kent Case"), and the King County Superior Court, Case No.
24 15-1-07142-KNT ("the King County Case"). The Kent Case arose out of his assault of DK on
25 October 6, 2015. Dkt. #201 at 2. A no contact order was issued in that case. Dkt. #202
26 (Declaration of Detective Lovisa Dvorak) at ¶4. Defendant violated it on April 26 and April 27,
27 2016, by calling DK. Id. On June 15, 2016, the Kent Police Department ("KPD") located
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1 defendant at a hotel in Kent with DK. They executed a probable cause arrest of defendant,
2 although the no contact order was no longer in place at the time. Id. at ¶¶ 4-5.

3 During the arrest, defendant was bitten by a K9 unit, and transported to the University of
4 Washington Valley Medical Center for treatment. Ex. A, Dkt. #179 at 1-6. Detective Lovisa
5 Dvorak and FBI Special Agent Sara Blond interviewed defendant about the no contact order
6 violations and the federal sex trafficking investigation. Defendant admitted to calling DK in
7 April. Dkt. #202 at ¶6. Defendant was then booked into the City of Kent Jail on the no contact
8 order violations. Dkt. #203 (Declaration of Michael D. Armstrong) at ¶3; Dkt. #205 (Declaration
9 of Tami Perdue) at ¶2. By September 13, 2016, all charges in the Kent Case were dismissed due
10 to DK's non-cooperation. Dkt. #205 at ¶¶ 2, 5. Defendant was then transported to the Maleng
11 Regional Justice Center ("RJC"). Dkt. #203 at ¶4. When the King County Case was dismissed
12 on October 14, 2016, the FBI executed the federal arrest warrant and took defendant into federal
13 custody. Dkt. #204 at ¶5; see Ex. D, Dkt. #179 at 8. On November 2, 2016, defendant was
14 indicted for one count of Conspiracy to Engage in Sex Trafficking of a Minor and one count of
15 Sex Trafficking of a Minor. Dkt. #16. He was arraigned on November 10, 2016, and trial was set
16 for January 9, 2017. Dkt. #20.

17 On November 29, 2016, the Court granted defense counsel Gregory Geist's motion to
18 withdraw. Dkt. #28. Defendant's second attorney, Sean P. Gillespie, filed a motion to continue
19 the trial date on December 16, 2016. Dkt. #31. Defendant also filed a waiver of his right to a
20 speedy trial. Dkt. #32; see 18 U.S.C. § 3161 *et seq.* The Court continued the trial date to June
21 19, 2017 and excluded the period between December 16, 2016 and June 19, 2017 pursuant to 18
22 U.S.C. § 3161(h)(7)(A). Dkt. #33. Defense counsel filed a second motion to continue the trial
23 date without defendant's consent on April 7, 2017, see Dkt. #38; Dkt. #39, and a motion to
24 withdraw on April 27, 2017. Dkt. #42. The Court granted leave to withdraw on May 2, 2017.
25 Dkt. #47. A Superseding Indictment was issued on May 3, 2017. Dkt. #48. Defendant's third
26 attorney, Vanessa Pai-Thompson, was appointed on May 4, 2017. Dkt. #51. She filed a motion
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1 to continue the trial date on June 8, 2017. Dkt. #54. Defendant declined to waive his right to a
2 speedy trial. Dkt. #56. The Court found that “the ends of justice [would] be best served by
3 ordering a continuance in [the] case, and the ends of justice outweigh[ed] the best interests of
4 the public and the defendant in any speedier trial as set forth in 18 U.S.C. § 3161(h)(7).” Dkt.
5 #57. The trial date was continued to January 22, 2018, and the period between June 19, 2017
6 and January 22, 2018 was excluded. Id.

7 Defense counsel filed a motion to withdraw on September 11, 2017. Dkt. #74. This was
8 denied on September 19, 2017. Dkt. #79. Defendant then filed a notice of his desire to proceed
9 *pro se* on October 27, 2017. Dkt. #89. On November 7, 2017, the Court denied the request to
10 proceed *pro se* but granted the motion to withdraw. Dkt. #94. Current defense counsel was
11 appointed on November 8, 2017. Dkt. #101. Defendant filed a waiver of his right to a speedy
12 trial and a motion to continue the trial date on November 27, 2017. Dkt. #95; Dkt. #96. On
13 December 6, 2017, the Court continued the trial date to June 4, 2018, and excluded the period
14 between January 22, 2018 and June 30, 2018. Dkt. #97.

15 A Second Superseding Indictment was issued on February 7, 2018. Dkt. #98. Defendant
16 then filed another waiver of his right to a speedy trial and a motion to continue the trial date on
17 March 29, 2018. Dkt. #110; Dkt. #112. On April 12, 2018, the Court continued the trial date to
18 October 29, 2018, and excluded the period between June 4, 2018 and November 2, 2018. Dkt.
19 #116. Finally, on September 14, 2018, defendant filed another waiver of his right to a speedy
20 trial and a motion to continue the trial date. Dkt. #157; Dkt. #158. On September 20, 2018, the
21 Court continued the trial date to February 19, 2019, and excluded the period between October
22 29, 2018 and March 8, 2019. Dkt. #159. Trial has been set for February 25, 2019. Dkt. #226.

23 Defendant requests that the Second Superseding Indictment be dismissed for violations of
24 the Speedy Trial Act. Dkt. #178. He alleges that the government failed to seek an indictment
25 within 30 days of his arrest and failed to bring him to trial within 70 days of the arraignment.
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DISCUSSION

A. Defendant's Right to a Speedy Indictment

Under the Speedy Trial Act, “[a]ny information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.” 18 U.S.C. § 3161(b). However, only a federal arrest triggers the thirty-day time period. United States v. Benitez, 34 F.3d 1489, 1493 (9th Cir. 1994) (citing United States v. Manuel, 706 F.2d 908, 914-15 (9th Cir. 1983)). The involvement of FBI agents in an investigation or the questioning of a defendant by federal agents after an arrest does not convert a state arrest into a federal one. Manuel, 706 F.2d at 915. However, “Speedy Trial Act time periods may be triggered by state detentions that are merely a ruse to detain the defendant solely for the purpose of bypassing the requirements of the Act.” Benitez, 34 F.3d at 1494 (citing United States v. Cepeda-Luna, 989 F.2d 353, 357 (9th Cir. 1993)). The Act “would lose all force if federal criminal authorities could arrange with state authorities to have the state authorities detain a defendant until federal authorities are ready to file criminal charges.” Id.

Defendant argues that his arrest in June 2016 was a federal arrest. In support of that allegation, he states that the arrest was based in part on a federal arrest warrant, that he was interrogated after the arrest by a federal law enforcement officer about the federal sex trafficking investigation, and that the federal government arranged with state authorities to have him detained in state custody until it was ready to file charges. See Dkt. #178 at 7-8. He points out that Special Agent Blond sent a text message to HS’s father after the arrest on June 16, 2016 that stated, “... [W]e arrested [defendant] last night on federal sex trafficking charges. He has a quick local charge to face, and then he will move into fed[eral] custody, hopefully tomorrow.” Ex. F, Dkt. #192 at 5. He alleges that the Kent City Jail’s records reveal that the charge at the time of his booking was “procure for prostitute who is a minor.” Dkt. #218; see Ex. A, Dkt. #217-1 at 2. He also points out that an FBI Operation Plan drawn up for his arrest refers to the

1 federal arrest warrant. Ex. B, Dkt. #217-1 at 13, 15-16. Alternatively, he argues that he was
2 detained pursuant to federal charges from September 2016 onward in the RJC after the charges
3 in the Kent Case were dismissed. Dkt. #178 at 8. He alleges that the federal government refused
4 to arrest him when he was released because a bench warrant had been issued in the King County
5 Case for his failure to appear in court on June 30, 2016, even though he was incarcerated at the
6 time. Dkt. #191 at 1-2. He was transported to the RJC pursuant to that warrant. See Ex. E, Dkt.
7 #191-1 at 4.

8 The Speedy Trial Act's time period was triggered only by the federal arrest on October
9 10, 2016. First, defendant was not arrested on a federal warrant on June 15, 2016. Detective
10 Dvorak and Agent Blond testified that he was arrested for violations of the no contact order
11 issued in the Kent Case. See Dkt. 202 at ¶¶ 4-5; Dkt. #204 at ¶¶ 3-4. As Sergeant Armstrong
12 explained in his testimony, it is not possible for the Kent City Jail to book a defendant on a
13 federal warrant. At the time of his arrest, all the pending charges against him were entered into
14 the Jail's Correctional Management System ("CMS"). The screenshots to which defendant refers
15 pertain to the federal charge. Ex. A, Dkt. #217-1 at 2-3. But he was arrested on violations of the
16 no contact order in the Kent Case, which can be viewed by navigating through the various
17 charges displayed on the screen. See Dkt. #203 at ¶¶ 2-3; Dkt. #220 at 2; Ex. B, Dkt. #220-2.

18 Agent Blond testified that the FBI Operation Plan was drawn up to authorize her presence
19 on the scene. See Ex. B, Dkt. #217-1. The federal arrest warrant was mentioned, but the purpose
20 of the operation was not to execute it. See id. Had that been the case, more agents would have
21 been involved, and defendant would have been arrested earlier in the day so that he could be
22 brought to federal court. She also testified that she sent the text message to HS's father to
23 reassure him that defendant was in custody. She did not want to get into the nuance of the
24 various charges against him. Detective Dvorak testified that defendant was interrogated about
25 his violations of the no contact order after his arrest in addition to the federal sex trafficking
26 investigation. The latter took longer because defendant admitted to his violations of the no
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1 contact order. See Dkt. #202 at ¶¶ 5-6. Finally, a report from the National Crime Information
2 Center shows that defendant was arrested on state charges on June 15, 2016, and on federal
3 charges on October 14, 2016. Dkt. #220 at 1; Dkt. #220-1.

4 Second, defendant's detention in state custody was not a ruse. Benitez, 34 F.2d at 1494.
5 He was detained in Kent City Jail between June 15, 2016 and September 13, 2016 while Tami
6 Perdue, the Chief Prosecuting Attorney in the Criminal Division of the Law Department in the
7 City of Kent, pursued the domestic violence-related charges against him. See Dkt. #205. She
8 intended to do everything possible to obtain convictions on those charges and was not merely
9 buying time for the federal case. Id. They were ultimately dismissed on September 13, 2016, due
10 to DK's non-cooperation. Id. Defendant was then transported to the RJC, where he remained in
11 state custody between September 13, 2016 and October 10, 2016. As defendant concedes, a
12 bench warrant had been issued in the King County Case. Dkt. #191 at 1-2. Sergeant Armstrong
13 testified that it is the policy of the City of Kent Jail to release a prisoner to the state or local
14 jurisdiction with pending charges against the prisoner first, even when there is a federal charge
15 pending. This ensures that the prisoner has no pending state or local charges when he or she is
16 taken into federal custody. See Dkt. #203 at ¶¶ 5-6. Furthermore, he testified that there was no
17 record of the FBI refusing to take defendant into custody. That refusal would have been
18 documented had it occurred. See id. at ¶7. Agent Blond testified that she was not involved in the
19 decision to transport defendant to the RJC. See Dkt. #204 at ¶¶ 4-5.

20 Defendant was indicted on November 2, 2016, nineteen days after his federal arrest. Dkt.
21 #16. There was no violation of his right to a speedy indictment. See 18 U.S.C. § 3161(b).

22 **B. Defendant's Right to a Speedy Trial**

23 The Speedy Trial Act states that "[i]n any case in which a plea of not guilty is entered,
24 the trial of a defendant charged in an information or indictment with the commission of an
25 offense shall commence within seventy days from the filing date (and making public) of the
26 information or indictment." 18 U.S.C. § 3161(c)(1). Defendant was arraigned on November 10,
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1 2016. Dkt. #20. His trial is set to begin on February 25, 2019. Dkt. #226. He alleges that the
2 various periods of delay were not properly excluded from the computation of time between his
3 indictment and his trial. Dkt. #178 at 9. He argues that he did not consent to them, that they were
4 necessitated by factors outside of his control, and that he has been significantly prejudiced by
5 the delay. Id. at 9-10.

6 A total of five¹ motions to continue the trial date were filed by four different attorneys.
7 See Dkt. #32; Dkt. #54; Dkt. #96; Dkt. #112; Dkt. #158. Defendant filed a waiver of his right to
8 a speedy trial for four of them, see Dkt. #32; Dkt. #95; Dkt. #110; Dkt. #157, which accounts for
9 the period of time excluded between December 16, 2016 and June 19, 2017, and between
10 January 22, 2018 and March 8, 2019, allowing trial to commence on February 25, 2019. In the
11 only motion to continue the trial date to which defendant did not consent, see Dkt. #54, the
12 Court found that this case “is so complex due to the nature of the charges, number of
13 complainants, and volume of discovery, that it would be unreasonable to expect counsel to be
14 prepared within the timeframe set by the current trial date and 18 U.S.C. § 3161.” Dkt. #57 at 2.
15 The Court concluded that, “[n]otwithstanding defendant’s refusal to sign a speedy trial waiver,
16 the ends of justice will be best served by ordering a continuance in this case, and the ends of
17 justice outweigh the best interests of the public and the defendant in any speedier trial as set
18 forth in 18 U.S.C. § 3161(h)(7).” Id. Furthermore, there is no merit to defendant’s contention
19 that he was compelled to waive his rights in September 2017 due to the government’s failure to
20 produce HS’s iPod. Dkt. #178 at 10. The Court has already rejected this argument. See Dkt.
21 #167 at 6-7.

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25 ¹ Defendant’s second attorney, Mr. Gillespie, filed a motion to continue the trial date without
26 defendant’s consent on April 7, 2017, see Dkt. #39, and a motion to withdraw on April 27, 2017. Dkt.
27 #42. The Court granted leave to withdraw on May 2, 2017, see Dkt. #47, and new counsel was
28 appointed on May 4, 2017. Dkt. #51. Mr. Gillespie’s motion to continue the trial date was therefore
terminated on June 20, 2017.

1 All of the periods of delay were properly excluded. There was no violation of defendant's
2 right to a speedy trial. See 18 U.S.C. § 3161(c)(1).

3 For all the foregoing reasons, defendant's motion is DENIED.

4 DATED this 15th day of February, 2019.

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8 Robert S. Lasnik

9 United States District Judge